

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

1935 May 13
Argued

TRANSCRIPT OF RECORD

**United States Court of Appeals for the
District of Columbia**

JANUARY TERM, 1935

No. 6405

672

SPECIAL CALENDAR

CHARLES BEAL, APPELLANT,

vs.

UNITED STATES OF AMERICA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED FEBRUARY 2, 1935.

PRINTED APRIL 16, 1935.

United States Court of Appeals for the District of Columbia

JANUARY TERM, 1935

No. 6405

SPECIAL CALENDAR

CHARLES BEAL, APPELLANT,

vs.

UNITED STATES OF AMERICA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 18, 1935.

United States Court of Appeals for the District of Columbia

No. 6405.

CHARLES BEAL, Appellant,

vs.

UNITED STATES OF AMERICA.

1 In the Supreme Court of the District of Columbia.

Criminal No. 54987.

UNITED STATES OF AMERICA

vs.

CHARLES BEAL.

Notice of Appeal.

(Name and address of appellant): Charles Beal, 73 M St., S. E., Washington, D. C.

(Name and address of appellant's attorney): Octave Bigoness, 217 Stewart Bldg., Washington, D. C.

Offense: Violation of Liquor Taxing Act, 1934.

Date of judgment: January 28th, 1935.

Brief description of judgment or sentence: Sentenced to penitentiary from one to three years.

Name of prison where now confined, if not on bail: United States Jail, D. C.

I, the above-named appellant, hereby appeal to the Court of Appeals of the District of Columbia from the judgment above mentioned on the grounds set forth below.

CHARLES BEAL,

Appellant.

OCTAVE BIGONESS,

Attorney for Appellant.

Date: February 2, 1935.

Grounds of Appeal.

The improper admission of evidence obtained on a search warrant improperly issued, under the authority of the District of Columbia Alcoholic Beverage Control Act, which act prohibits the manufacture for sale, keeping for sale, or the sale of alcoholic beverages without a license, in that said warrant was issued without probable cause, and evidence obtained thereunder violates defendant's rights under the fourth amendment to the Constitution and the fifth amendment thereof.

Filed Feb. 5, 1935. Frank E. Cunningham, Clerk.

2 In the Supreme Court of the District of Columbia.

Clerk's Statement of Docket Entries to Accompany Duplicate Notice of Appeal to the Court of Appeals.

Criminal No. 54987.

Indicted for Vio. Liquor Taxing Act of 1934.

UNITED STATES OF AMERICA

VS.

CHARLES BEAL.

Docket Entries.

1934.

Sept. 11. Presentment and indictment filed.

Sept. 26. Arraigned, plea not guilty.

Nov. 2. Motion to quash search warrant and suppress evidence filed. Exhibit filed.

Nov. 22. Affidavit in support of motion filed.

Dec. 7. Motion to quash search warrant and suppress evidence argued and overruled. Exc.

Jan. 14. Jury sworn. Verdict guilty as indicted. Committed.

Jan. 15. Motion for new trial filed.

Jan. 17. Motion for new trial argued and overruled. Exc.

Jan. 28. Sentenced to penitentiary for period of one year to three years, to take effect from and including this date.

Feb. 2. Notice of appeal filed.

Date: February 2, A. D. 1935.

Attest:

[Seal Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,

Clerk.

By RICHARD J. KIRKLAND,

Assistant Clerk.

Note.—This statement from the docket entries is intended suitably to identify the case and not as a substitute for the record on appeal, which is to be prepared and certified as provided in Rules 7, 8, and 9, of Supreme Court U. S.

3 [Endorsed:] United States Court of Appeals for the District of Columbia. Filed Mar. 13, 1935. Henry W. Hodges, Clerk.

United States Court of Appeals for the District of Columbia.

January Term, 1935.

No. 6405.

CHARLES BEAL, Appellant,

vs.

UNITED STATES, Appellee.

Appeal from the Supreme Court of the District of Columbia.

4 Supreme Court of the District of Columbia.

Criminal No. 54987.

UNITED STATES

vs.

CHARLES BEAL.

UNITED STATES OF AMERICA,

District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said Dis-

trict, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

Indictment.

Filed in Open Court Sept. 11, 1934.

In the Supreme Court of the District of Columbia, Holding
a Criminal Term.

July Term, A. D. 1934.

DISTRICT OF COLUMBIA, ss:

The Grand Jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath, do present:

That one Charles Beal, late of the District of Columbia aforesaid, on, to wit, the thirteenth day of August, 1934, and at the District of Columbia aforesaid, feloniously and unlawfully did possess a certain quantity of distilled spirits, that is to say, fifty-one half gallons of corn whiskey, the immediate containers of which distilled spirits did not then and there have affixed thereto stamps denoting the quantity of distilled spirits contained therein and evidencing payment of all Internal Revenue taxes imposed on such spirits; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

LESLIE C. GARNETT,
*Attorney of the United States in
and for the District of Columbia.*

[Endorsed:] Criminal No. 54987. United States vs. Charles Beal. Vio. Liquor Taxing Act of 1934. A True Bill. Walter Woodward, Foreman.

Supreme Court of the District of Columbia.

Wednesday, September 26, A. D. 1934.

The Court resumes its session pursuant to adjournment, Mr. Chief Justice Wheat, presiding.

Come as well the Attorney of the United States, as the defendant in proper person, according to his recognizance

and by his attorney, Octave Bigoness, Esquire; and thereupon the defendant being arraigned upon the indictment, the reading whereof he specifically waives, pleads not guilty thereto, and for trial puts himself upon the country and the Attorney of the United States doth the like.

Motion to Quash Search Warrant and Suppress Evidence.

Filed November 12, 1934.

Now comes the defendant in the above entitled cause and shows to the Court that the property, mentioned and enumerated in copy of return on search warrant in this cause, was taken from his dwelling premises and possessed by members of the police force of the District of Columbia, unlawfully, unreasonably and unconstitutionally, through and by means of an invalid and void search warrant, in that said search warrant was issued in violation of the Constitution of the United States and the fourth and fifth amendments thereto, because issued without probable cause, in that it was issued on affidavit for search warrant which set forth no facts sufficient to warrant finding of probable cause for its issuance. All of which appears fully from the affidavit for search warrant, search warrant and return thereon. Copies marked A attached hereto.

Now comes the defendant and further shows that
7 there was no affidavit nor recital of oral examination of a sale or sales from said goods, no facts sufficient to establish the legal conclusion that liquors were being illegally possessed for sale or illegally sold by defendant on said premises.

That this defendant anticipates that the liquor so seized will be used as evidence against him in the trial of an indictment returned against him and now pending in this court, No. 54987.

Wherefore, the defendant moves that said evidence be excluded at the trial in this court and that it be suppressed, and the search warrant be quashed.

OCTAVE BIGONESS,
Atty. for Defendant.

United States Attorney,
District of Columbia:

Please take notice of hearing of this motion.

Copy received.

I. GOLDSTEIN,
Asst. U. S. Atty.

11-2-34.

Supreme Court of the District of Columbia.

Friday, December 7, A. D. 1934.

The Court resumes its session pursuant to adjournment, Mr. Justice Luhring presiding.

Come as well the Attorney of the United States as the defendant herein by his attorney, Octave Bigoness, Esquire; and thereupon the defendant's motion to quash search warrant and suppress evidence coming on to be heard, after argument by counsel, is by the Court overruled, to which action of the Court the defendant by his attorney prays an exception, which is noted.

8 *Memoranda.*

January 14, 1935.—Jury sworn. Verdict guilty as indicted. Committed.

January 17, 1935.—Motion for new trial overruled. Exception.

Supreme Court of the District of Columbia.

Monday, January 28, A. D. 1935.

The Court resumes its session pursuant to adjournment, Mr. Justice Luhring presiding.

Come as well the Attorney of the United States as the defendant in proper person, in custody of the Superintendent of the Washington Asylum and Jail, and by his attorney, Octave Bigoness, Esquire; and thereupon it is demanded of the defendant what further he has to say why the sentence of the law should not be pronounced against him, and he says nothing except as he has already said; whereupon it is considered by the Court that for his said offense the said defendant be taken by the Superintendent

aforesaid, to the asylum and jail aforesaid, whence he came, thence to the penitentiary, as designated by the Attorney General of the United States, there to be imprisoned for the period of one (1) year to three (3) years, to take effect from and including this date.

Memorandum.

February 2, 1935.—Notice of appeal filed.

9

Assignment of Errors.

Filed March 11, 1935.

Now comes the defendant, Charles Beal, by his attorney, Octave Bigoness, and files the following assignment of errors, and says that the judgment entered in this cause is erroneous and unjust for the following reasons:

1. The court erred in denying the motion of the defendant to quash the search warrant and suppress evidence.

2. The court erred in admitting testimony on behalf of the United States relative to liquor secured after a search on a warrant which was issued without probable cause.

3. The court erred in admitting testimony showing the finding of receipts and letters.

4. The court erred in not granting a new trial by reason of the above errors.

Wherefore, the defendant prays that the judgment of the Supreme Court of the District of Columbia be reversed, and for such other and further relief as may be proper in the premises.

OCTAVE BIGONESS,
Attorney for the Defendant.

10 Supreme Court of the District of Columbia.

Monday, March 11, A. D. 1935.

The Court resumes its session pursuant to adjournment, Mr. Justice Adkins presiding.

Now comes here the defendant by his attorney, Octave Bigoness, Esquire, and prays the Court to sign, and make a part of the record his Bill of Exceptions taken during the trial of the case and filed with the Court on the 11th day of March, A. D. 1935, which is accordingly done.

LUHRING, J.

11 *Designation of Record Before Justice Oscar R. Luhring.*

 ' Filed March 11, 1935.

 Irvin Goldstein, of Washington, D. C., for the United States.

 Octave Bigoness, of Washington, D. C., for the defense.

 The Clerk is directed to prepare the record in the above cause forthwith, and forward it promptly with his certificate to the Clerk of the United States Court of Appeals for the District of Columbia.

 The Clerk will include therein the following:

1. Indictment.
2. Motion to quash.
3. Minute of order overruling motion.
4. Minute of plea.
5. Bill of exceptions with search warrant and supporting affidavits attached.
6. Minutes of judgment.
7. Minute of sentence.
8. Assignment of errors.
9. This designation of record.

OCTAVE BIGONESS,
Attorney for Defendant.

 Service of copy of foregoing designation of record accepted this 11th day of March, 1935.

IRVIN GOLDSTEIN,
Assistant U. S. Atty.

 This designation of record ordered this 11th day of March, 1935.

O. R. LUHRING,
Justice.

12 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

 I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 7, both inclusive, to be a true

and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in the case of United States vs. Charles Beal, Criminal No. 54987, as the same remains upon the files and of record in said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the City of Washington, in said District, this 13th day of March, 1935.

[Seal of Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,

Clerk,

By SAMUEL SILVERMAN,

Asst. Clerk.

13 [Endorsed:] United States Court of Appeals for
the District of Columbia. Filed Mar. 13, 1935.
Henry W. Hodges, Clerk.

In the Supreme Court of the District of Columbia,
Holding a Criminal Court.

Criminal. No. 54987.

UNITED STATES

v.

CHARLES BEAL, Defendant.

Defendant's Bill of Exceptions.

Be it remembered that the trial of this cause came on for hearing on the 14th day of January, 1935, on an indictment for violation of the Liquor Taxing Act of 1934, filed in this court September 11th, 1934.

Be it remembered that upon the arraignment of the defendant upon the 26th day of September, 1934, he being represented by Octave Bigoness, Attorney, entered a plea of not guilty.

That then and thereupon the defendant, on the 2nd day of November, 1934, filed a motion to quash search warrant and suppress evidence, and filed a supporting affidavit for the same on the 22nd day of November, 1934, said motion being based on the following reason; that the rights of the defendant under the fourth and fifth amendments to the

Constitution were violated, in that the evidence was secured on a search warrant which was issued without probable cause, the search warrant having been issued under the authority of section 29 of the District of Columbia Alcoholic Beverage Control Act, which prohibits the manufacture for sale, keeping for sale, or the selling of alcoholic beverages, without a license, and the foundation for the probable cause as stated in the search warrant and affidavit was the sole fact of seeing a man come from the house with a quantity of no tax liquor.

That then and thereupon, on the 7th day of December, 1934, said motion was argued, overruled, and exception noted.

That thereupon, on January 14th, 1935, the case came on for trial, the United States being represented by Mr. Irvin Goldstein, Assistant United States Attorney, and the defendant by Mr. Octave Bigoness, before Justice Oscar Luring. That then and thereupon a jury was empan-
14 eled and sworn to try the issues of the case.

That then and thereupon the United States, to maintain the issue on its part joined, called Officer George Deyoe, who stated that he went to premises 73 M. St., S. E., in the District of Columbia, for the purpose of executing a search warrant previously made. Witness thereupon identified a search warrant dated August 13th, 1934, and accompanying complaint and affidavit in support thereof, as the search warrant being executed by him at that time, said search warrant being identified as Government Exhibit No. 1, true and correct copies of which are attached hereto. That he knew the defendant lived there; that the defendant was not there at the time of the search but was arrested five or six days later.

Upon being asked what he did and what he found in the premises defendant objected on the grounds that the officer and those with him had no right to make a search, and the search was illegal in the face of the Fourth and Fifth amendments to the Constitution, in that the search warrant was issued without probable cause, and defendant renewed the same objections stated in the motion heretofore overruled. Objection overruled and exception noted.

The witness stated that he found fifty-one one-half gallon jars of liquor in a trap in a closet, and that he found a number of receipts and letters addressed to defendant upon

a buffet in the dining room. Witness identified said receipts and letters. Defendant objected to the testimony relative to the receipts and letters in that they did not come within the purview of the search warrant. Objection overruled and exception noted. A sample of the liquor, the receipts and letters were then introduced in evidence over the objection of the defendant on the above grounds. Overruled and exception noted. The search warrant was also introduced in evidence.

That then and thereupon to further maintain the issue the United States called severally Officers McKewon and See, whose testimony was the same as that of Officer Deyoe.

That then and thereupon the United States called Dr. Albert A. Spear, chemist, who said that the liquor examined by him was intoxicating liquor, of 42.5% alcohol by
15 volume.

That then and thereupon the United States rested its case, and the defendant rested without putting in testimony, and both sides submitted the case without argument. The Court then gave instructions; the jury retired, thereafter found the defendant guilty and he was committed.

That then and thereupon the defendant filed a motion for a new trial and the same was overruled and exception noted.

That then and thereupon the defendant was sentenced to from one to three years in the penitentiary, on January 28th, 1935.

That then and thereupon the defendant presented to the Court this his bill of exceptions to present to the Court the various rulings excepted to, on the — day of —, 1935.

The defendant, Charles Beal, by his counsel, Octave Bigoness, therefore prays the Court to settle, sign and seal this his bill of exceptions, which is accordingly done this 11th day of March, 1935.

By the Court:

O. R. LUHRING,

Justice.

OCTAVE BIGONESS,

Atty. for Def.

Search Warrant.

UNITED STATES OF AMERICA,

District of Columbia, ss:

The President of the United States of America to G. C. Deyoe, a member of the Metropolitan Police Department of the District of Columbia:

Whereas, I, Needham C. Turnage, a United States Commissioner for the District of Columbia, upon consideration of the complaint made by the aforesaid member of the Metropolitan Police Department of the District of Columbia, have examined on oath orally the said complainant herein and Benjamin F. Bean, a witness, and have caused them to subscribe to their affidavits in support of the complaint; and

Whereas the said affiant states on his oath that he is positive and the said member of the Metropolitan Police Department states on his oath that he does verily believe from the statements of said affiant that alcoholic beverages are unlawfully manufacured for sale, kept for sale, or sold in violation of the provisions of the District of Columbia Alcoholic Beverage Control Act, an Act of Congress approved January 24, 1934, in the premises of one Charles Beal, said premises being described as 73 M St., S. E., and being within the District of Columbia; and

Whereas from oral examination under oath and the affidavit of the said affiant it appears that he was near said premises on, to wit, August 13, 1934, and saw an unknown colored man, about 20 yrs. old, 135 lbs., 5 ft. 7 in., dark brown skin, come from said premises with a sack and a box which resemble those used for carrying whiskey; and upon the said colored man seeing affiant he dropped said sack and box and returned to said premises; that upon examination of the same they contained 18 one-half gallon jars of uncolored whiskey, the same being non-tax-paid whiskey; and said Charles Beal having no license to sell said whiskey as provided in the above mentioned Act of Congress; and that said alcoholic beverages were manufactured for sale, kept for sale or sold contrary to the provisions of the District of Columbia Beverage Control Act; and

Whereas the said member of the Metropolitan Police Department prays that a search warrant be issued under

authority of Section 29 of the District of Columbia Alcoholic Beverage Control Act of the Statutes of the United States, authorizing him to enter and search all places within said premises, and to seize and take into his possession all alcoholic beverages manufactured for sale, kept for sale, or sold, and any other property designed for use in connection with such unlawful manufacture for sale, keeping for sale, or selling in violation of said District of Columbia Alcoholic Beverage Control Act; and

Whereas from the examination of the witnesses orally and upon their affidavits I find there is probable cause to believe that the foregoing grounds for the application exist;

Now, therefore, you are hereby commanded in the name and by the authority of the President of the United States to enter and search the premises hereinbefore described in the day time and to seize and take into your possession all alcoholic beverages and any other property designed for use in connection with such unlawful manufacture for sale, keeping for sale or selling, to the end that the same may be dealt with according to law.

You are also commanded in the event that you seize any of the property above described, to give a copy of this warrant, together with a receipt for the property so seized, specifying it in detail, to the person from whom it is taken or in whose possession it is found, or, in the absence of any person thereat or therein or in possession thereof to leave a copy of this warrant, together with such receipt as aforesaid, in the place where said property is found and to bring said property before me.

You are further commanded to execute this warrant within ten days from this date and forthwith to make return thereof to me with a written inventory of the property seized by you, made publicly or in the presence of the person from whose possession it was taken and of the applicant for the warrant if they are present.

Witness my hand and seal of my office this 13th day of August, 1934.

(Signed) NEEDHAM C. TURNAGE,
[SEAL.] *United States Commissioner in and
for the District of Columbia.*

Arrested: 8/13/34, 11.30 A. M.

Return.

I, George C. Deyoe, a member of the Metropolitan Police Department of the District of Columbia, do swear that I executed the within warrant on the 13th day of August, 1934, by searching the premises as commanded therein and giving (leaving) a copy of the warrant together with a receipt for the property taken, specifying said property in detail to the person from whom it was taken (to the person in whose possession it was found), (in the place where it was found), and do swear that the following inventory contains a true and detailed account of all the property taken by me on the warrant:

51 1/2 gal. jars of white non tax pd. whiskey.

G. C. DEYOE,

Member, Metropolitan Police Department.

Subscribed and sworn to before me this — day of —, 193-.

_____,
*United States Commissioner in and
for the District of Columbia.*

UNITED STATES OF AMERICA,
District of Columbia, ss:

Before me, Needham C. Turnage, a United States Commissioner for the District of Columbia, personally appeared Benjamin F. Bean, who, after being by me duly sworn and examined orally, deposes and says:

That he is positive that alcoholic beverages are contained in the hereinafter mentioned premises within the District of Columbia, and that said alcoholic beverages are kept for sale, and are sold in violation of the provisions of the District of Columbia Alcoholic Beverage Control Act approved January 24, 1934.

That on, to wit, Aug. 13, 1934, about 10:00 o'clock A. M., I was near premises described as 73 M St., S. E., occupied by — —. He was near said premises on, to wit, August 13, 1934, and saw an unknown colored man, about 20 yrs. old, 135 lbs., 5 ft. 7 in., dark brown skin, come from said premises with a sack and a box which resemble those used for carrying whiskey; and upon the said colored man seeing affiant he dropped said sack and box and re-

turned to said premises; that upon examination of the same they contained 18 one-half gallon jars of uncolored whiskey, the same being non-tax paid whiskey; and Charles Beal having no license to sell said whiskey as provided in the above mentioned Act of Congress.

(Signed)

BENJAMIN F. BEAN.

Subscribed and sworn to before me this — day of —, 193-.

(Signed) NEEDHAM C. TURNAGE,
[SEAL.] *United States Commissioner in and
for the District of Columbia.*

18,265.

19 UNITED STATES OF AMERICA,
District of Columbia, ss:

Before me, Needham C. Turnage, a United States Commissioner for the District of Columbia, personally appeared G. C. Deyoe, who, being by me first duly sworn and orally examined, deposes and says that he is a member of the Metropolitan Police Department, and that he does verily believe from the statements of the hereinafter named affiant that alcoholic beverages are being kept for sale and sold unlawfully and contrary to the provisions of the District of Columbia Alcoholic Beverage Control Act, in the District of Columbia, in the premises 73 M St., S. E., this being the premises of Charles Beal, who did unlawfully keep for sale and sell on said premises alcoholic beverages contrary and in violation of the Act of Congress approved January 24, 1934, said Act being an Act to control the manufacture, transportation, possession and sale of alcoholic beverages in the District of Columbia, contrary to the form of the Statute in such case made and provided, and particularly contrary to Sections 29, 33 and 36 of the said District of Columbia Alcoholic Beverage Control Act approved January 24, 1934, and against the peace and dignity of the United States of America.

This complaint is supported by the affidavit of Benjamin F. Bean, a witness, which said affidavit is filed herewith and made a part of the record of this case.

G. C. DEYOE,
*Member, Metropolitan Police Department,
of the District of Columbia.*

Subscribed and sworn to before me this 13th day of August, 1934.

(Signed)	NEEDHAM C. TURNAGE,
[SEAL.]	<i>United States Commissioner, District of Columbia.</i>

20 [Endorsed:] Criminal No. 54987. United States v. Charles Beal, Defendant. Bill of Exceptions and Search Warrant. United States Court of Appeals for the District of Columbia. Filed Mar. 13, 1935. Henry W. Hodges, Clerk. — —, Atty. for Defendant, Stewart Bldg.

Endorsed on cover: District of Columbia Supreme Court. No. 6405. Charles Beal, Appellant, vs. United States of America. United States Court of Appeals for the District of Columbia. Filed Feb. 2, 1935. Henry W. Hodges, Clerk.

(6098-C)

Addition to Record per Stipulation of Counsel

United States Court of Appeals for the
District of Columbia

APRIL TERM, 1935

No. 6405

CHARLES BEAL, APPELLANT,

vs.

UNITED STATES OF AMERICA.

FILED MAY 6, 1935.

United States Court of Appeals for the District of
Columbia.

January Term.

No. 6405.

Special Calendar.

CHARLES BEAL, Appellant,

v.

UNITED STATES OF AMERICA.

Counsel for the Appellant and the United States, hereby stipulate for the enlargement of the record by the inclusion of the Supporting Affidavit to the Motion to Quash the Search Warrant, filed November 22, 1934; the true copy thereof following:

IRVIN GOLDSTEIN,
Assistant United States Attorney.
OCTAVE BIGONESS,
Attorney for Appellant.

In the Supreme Court of the District of Columbia, Holding a Criminal Court.

Criminal No. 54987.

UNITED STATES

v.

CHARLES BEAL, Defendant.

Affidavit in Support of Motion.

DISTRICT OF COLUMBIA, ss:

I, Charles Beal, upon oath do say that I am the Defendant in the above entitled cause, that I reside in premises 73 M St., S. E. which is entirely a private residence; that on the 13th day of August, Officer G. C. Deyoe raided my residence and took therefrom a quantity of whiskey belonging to me, on a search warrant which shows on its face insufficient facts to warrant probable cause of sale, holding for sale or manufacturing for sale; that I have been indicted on the finding in my residence and this evidence is about to be used against me in a prospective trial, that this warrant was issued and predicated on the alcoholic beverage act, that the District of Columbia issued no information on account thereof, yet nevertheless the matter was brought before the Grand Jury; that my rights under the Constitution, particularly the fourth and fifth articles thereof have been violated; wherefore I pray the Court that this search warrant be quashed and the use of the evidence so gained be suppressed.

CHARLES BEAL.

Subscribed and sworn to before me this 12th day of Nov. 1934.

MYER PUMPS,
Notary Public, D. C.

Copy received.

I. GOLDSTEIN,

11-22-34.

[Endorsed:] 6405. Charles Beal, appellant, vs. United States of America. United States Court of Appeals for the District of Columbia. Filed May 6, 1935. Henry W. Hodges, Clerk.

(6313-C)

FILED MAY 3 - 1935

Henry W. Hodges

CLERK

**United States Court of Appeals for
the District of Columbia**

JANUARY TERM

No. 6405

SPECIAL CALENDAR

CHARLES BEAL, APPELLANT,

vs.

UNITED STATES OF AMERICA.

BRIEF FOR APPELLANT

OCTAVE BIGONESS,
*Attorney for Appellant,
Stewart Building.*

**United States Court of Appeals for
the District of Columbia**

JANUARY TERM

No. 6405

SPECIAL CALENDAR

CHARLES BEAL, APPELLANT,

vs.

UNITED STATES OF AMERICA.

BRIEF FOR APPELLANT

STATEMENT OF THE CASE

On a search warrant directing seizure of alcoholic beverages manufactured for sale, kept for sale or sold without a license, issued under Section 29, District of Columbia Alcoholic Beverage Control Act, alcoholic liquor of Appellant was seized in his dwelling on which was based his conviction under the Liquor Taxing Act of 1934.

The facts stated as grounds of probable cause, typewritten on a printed form (R. 16) (R. 18) were substantially that an unknown colored man came from the premises carrying a quantity of non-tax-paid liquor.

Aggrieved in his rights under 4th Amendment

to the Constitution is the Appellant by evidence seized on such warrant. Hence, Motion to Quash (R. 7), Objection at trial (R. 14), Assignment of Errors (R. 9).

ARGUMENT

“The Constitution is paramount.” *Schenks v. U. S.*, 55 Appeals 84. This gem of Judge Smith is pervasive here.

The guaranties of the 4th Amendment are to be liberally construed to prevent impairment of protection extended. *Grau v. U. S.*, 287 U. S. 128.

“The statement of the **sustaining facts** showing probable cause is as indispensable to the lawful issue of a search warrant as the legal conclusion that such cause exists.” *Siden v. U. S.*, 9 Fed. 2nd 243.

Gist—Would a prudent and cautious man believe, from the sustaining facts shown in the search warrant (R. 16-18), that the offense of selling, keeping or manufacturing for sale without a license had been committed? *Dumbra v. U. S.*, 268 U. S. 441; *Shore v. U. S.*, 58 App. D. C. 519; *Grau v. U. S.*, 287 U. S. 128.

Can it be inferred that there was other liquor in the premises?

The sustaining fact here is one isolated instance of liquor carried from the premises; there are no additional corroborative circumstances.

The basic evidence for search warrant must be competent jury trial evidence. *Giles v. U. S.*, 284 Fed. 208; *Grau v. U. S.*, 287 U. S. 128.

Do the sweeping generalities of the **printed form** supply this?

The question of seizing letters and receipts, Appellant not being arrested at time is covered by *Kirvin v. U. S.*, 5 Fed. 2nd 282.

OCTAVE BIGONESS,
Attorney for Appellant,
Stewart Building.

FILED MAY 11 1935

Henry W. Hodges

No. 6405

In the United States Court of Appeals
for the District of Columbia

JANUARY TERM, 1935

CHARLES BEAL, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA

BRIEF FOR APPELLEE

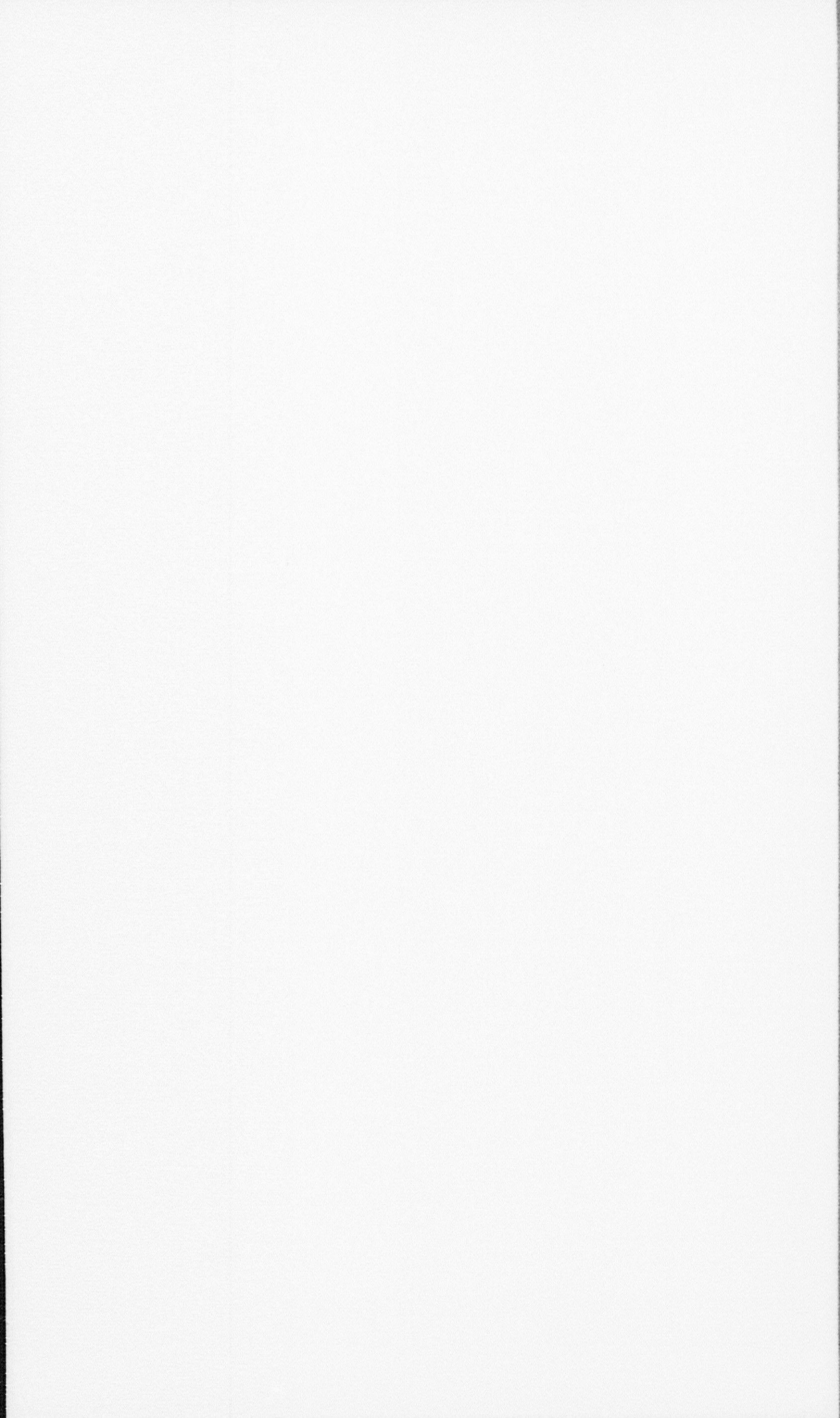
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**In the United States Court of Appeals
for the District of Columbia**

JANUARY TERM, 1935

No. 6405

CHARLES BEAL, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

BRIEF FOR APPELLEE

STATEMENT OF FACTS

On the morning of August 13, 1934, police officers Bean and See, while riding in the vicinity of appellant's home at 73 M Street, Southeast, observed a colored man leave the premises carrying a cardboard box and a burlap bag, the box being of the kind commonly used in carrying whiskey. When the man saw the police officers approaching, he dropped the box and the bag and returned to appellant's house. The police officers recovered the box and bag, which were found to contain eighteen one-half gallon jars of non-tax-paid whiskey. Upon this information, together with the information that the appellant had no license to sell whiskey, the officers procured a search warrant (R. 12), upon the affidavit of Officer Bean, which

set forth substantially the above facts (R. 14). On the same day, upon execution of this search warrant at said premises, the police found fifty-one one-half gallon jars of non-tax-paid whiskey in a trap in a closet (R. 10), and also seized a number of receipts and letters addressed to appellant, which were found upon a buffet in the dining room (R. 10, 11).

ARGUMENT

Prior to the trial, appellant moved to quash the search warrant upon the ground that no probable cause was stated in the accompanying affidavit (R. 5), and at the trial objected to the admission in evidence of the whiskey seized upon the warrant (R. 10). It is to be noted that the motion to suppress does not include the receipts and letters heretofore mentioned. This brings about the question as to whether or not the facts stated in the affidavit of Officer Bean, which is the basis of the search warrant, were sufficient to bring about the conclusion that alcoholic beverages were being unlawfully kept for sale on the premises. The affidavit upon which the warrant is issued should disclose a sufficient basis in fact to justify the issuance of the warrant. *Siden v. United States*, 9 Fed. (2d) 241.

It is the contention of appellee that the statements of fact in the affidavit set forth sufficient evidentiary facts to establish probable cause. It is, of course, difficult to present authorities identical in point of fact; each case must be considered

upon its own merits, applying the tests laid down by the Supreme Court. A man is seen leaving appellant's house, a private dwelling, to be sure—and not a place of business of a licensed dealer in intoxicating liquors—immediately upon seeing the police officers, the man drops the packages he was carrying and *returns* to the house. The packages are found to contain *eighteen one-half gallon jars of whiskey*. Would this not indicate to a reasonably discreet and prudent man the unlawful character of the transaction? The man came *out* of the house and went back *into* it. Would not this be similarly indicative of this man's relation to the premises, and this relationship bring about the logical conclusion that an illegal liquor business was being conducted in the house? Can it be said that the United States Commissioner did not have probable cause on which to issue the search warrant? As the Supreme Court of the United States said in *Dumbra v. United States*, 268 U. S. 441:

In determining what is probable cause we are not called upon to determine whether the offense charged has, in fact, been committed. We are concerned only with the question whether affiant had reasonable grounds at the time of his affidavit, and the issuance of the warrant for the belief that the law was being violated on the premises to be searched; and if the apparent facts set out in the affidavit are such that a reasonably discreet and prudent man would be led to believe that there was a commission of the

offense charged, there is probable cause justifying the issuance of a warrant.

The attention of the court is directed to the affidavit upheld in *Steele v. United States*, 267 U. S. 500. In that case, the affidavit stated:

That one Einstein, accompanied by another agent, was standing in front of a garage when he saw a small truck driven into the entrance of the garage and saw the driver unload from the end of the truck a number of cases of stenciled whiskey, that they were the size and appearance of whiskey cases, and that he believed they contained whiskey.

Here Einstein did not know for certain that the cases contained whiskey, but he did have probable cause to believe that they contained whiskey; in the instant case, the police officers were positive that whiskey had been brought from the premises.

The attention of the court is also directed particularly to the case of *Shields v. United States*, 58 App. D. C. 215, 218. See also *Shore v. United States*, 60 App. D. C. 137; *Maynard v. United States*, 23 Fed. (2d) 141; and *Boehm v. United States*, 6 Fed. (2d) 497.

Appellant also assigns as error the admission in evidence of letters and receipts indicating his ownership of the whiskey seized. It is said in the case of *Kirvin v. United States*, 5 Fed. (2d) 282, cited by appellant:

It is intended that the warrant be issued with the privilege to seize such property as

was used as the means of committing a felony.

The appellant is here convicted of the unlawful possession of non-tax-paid liquor. The circumstances of such possession is an ingredient of the offense, and the admission of the papers complained of is merely proof of the means of committing the offense; the place of possession being the means of committing the offense, evidence proving the place of possession is likewise proof of the means of committing the offense.

Furthermore, in the same connection, the court's attention is directed to the fact that the evidence here objected to was not included in the motion to suppress. See *Adams v. New York*, 192 U. S. 585.

In any event, the error complained of here went only to prove the ownership of the liquor, which was admitted by the appellant in his motion to suppress, and it is submitted that, if error, it is not such as would warrant reversal of the judgment of the court below.

CONCLUSION

For the reasons stated, it is submitted that the judgment of the lower court should be affirmed.

Respectfully submitted.

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